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Attorneys for Plaintiff
SINCO TECHNOLOGIES PTE, LTD.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SINCO TECHNOLOGIES PTE, LTD,
Plaintiff,

v.

SINCO ELECTRONICS (DONGGUAN)
CO., LTD.; XINGKE ELECTRONICS
(DONGGUAN) CO., LTD; XINGKE
ELECTRONICS TECHNOLOGY CO.,
LTD.; SINCOO ELECTRONICS
TECHNOLOGY CO., LTD.; MUI LANG
TJOA (an individual); NG CHER YONG
aka CY NG (an individual); and LIEW
YEW SOON AKA MARK LIEW (an
individual)

Defendant.

CASE NO. 3:17CV5517 EMC

JOINT DISCOVERY DISPUTE LETTER

Pursuant to Judge Edward M. Chen's standing order, the parties submit this Joint
Discovery Dispute Letter. On **April 12, 2018**, Plaintiff SINCO TECHNOLOGIES PTE LTD,
("SinCo") served Defendant NG CHER YONG aka CY NG (Mr. Ng) with 20 requests for
production ("RFP"). On **May 25, 2018**, SinCo received Mr. Ng's objections with some illegible
documents and the majority of documents were from 3rd party companies (totaling 1,723 pages)¹.
To date Mr. Ng has produced 2,276 pages of responsive information and SinCo has produced

¹ Attached hereto as **Exhibit A** is a true and correct copy of excerpts of Mr. Ng's Responses to RFP, Set one, dated
May 23, 2018.

1 902,052 pages of responsive information.

2 **I. SINCO'S POSITION**

3 On **June 12, 2018**, SinCo's counsel sent a letter to meet and confer pursuant to the Federal
4 Rules of Civil Procedure ("FRCP"), Rule 34 identifying inadequacy of Mr. Ng's discovery
5 responses and requesting Mr. Ng to supplement his production as described in each request of
6 document production. On **June 19, 2018**, Mr. Ng's counsel responded to SinCo's letter dated June
7 12, 2018 asserting that Mr. Ng has complied in full with all the requests. After receiving the
8 response letter, on **June 25, 2018**, SinCo and Mr. Ng's counsel had a meet and confer telephone
9 call to discuss the discovery issues. SinCo's counsel mainly addressed and discussed all the
10 requests pertaining to the following three issues on that call:

11 **1. DOCUMENTS REFERENCING THE WORD "SINCO" THAT ARE EITHER**
12 **REFERENCED AS A NOUN OR AS USED IN AN EMAIL ADDRESS (NOS.12 - 14 & 19)**

13 Mr. Ng's testimony made it clear that there would not be millions of documents using the
14 word "SINCO," as the contract manufacturer operated in Chinese and 99% of their employees
15 only spoke some dialect of Chinese, contrary to Defense counsel excuse for non-production.
(Deposition Transcript of NG Cher Yong on **February 12, 2016** at 145:21-24; 228:15-229:9.)

16 **2. THE DISCREPANCY IN THE VOLUME OF INFORMATION PRODUCED VERSUS**
17 **IDENTIFIED BY MR. NG'S DURING HIS DEPOSITION (REQUEST NO.20)**

18 To this request, counsel of Mr. Ng has indicated that all the documents Mr. Ng testified to
19 in his deposition have either been produced or appear on a privilege log. Mr. Ng's testimony
20 indicates the existence of a banker box that holds over 5,000 pages and Mr. Ng has produced
21 documents substantially less than even half a banker's box *i.e* about 50 pages. (*Id.* at 316:18-
22 317:4.) Mr. Ng's testimony also indicates that Mr. Ng is in possession of a Microsoft laptop since
23 October 2017, issued by DG and that there are emails on the laptop from U.S. customers. (*Id.* at
24 168:3-22.) Out of all documents produced by Mr. Ng, much of it is non-responsive and from 3rd
25 party companies. Mr. Ng has failed to provide SinCo any data on the Microsoft computer. SinCo
repeatedly requested that Mr. Ng make efforts to provide any response to Request No.20.

26 **3. THE DELL VOSTRO LAPTOP (REQUESTS NOS.1 - 11 & 13 - 20)**

27 From 2013 until October of 2017 Mr. Ng used a Dell Vostro laptop. (*Id.* at 168:5-170:18.)
28

1 During his deposition Mr. Ng indicated that when he turned over the laptop to Electronics DG, he
 2 was under a legal hold to make sure that nothing was destroyed on the laptop. (*Id.*) Mr. Ng
 3 indicated that Mr. Wang at Electronics DG refused to return the Dell laptop; even though they
 4 knew Mr. Ng was under a preservation obligation in the litigation pending in the U.S. (*Id.* at
 5 171:21.) Mr. Ng now claims that he has no possession and control of the laptop and cannot be
 6 produced. We request that Mr. Ng obtain his laptop so that it can be examined by a forensic
 7 expert for data recovery. Also, as Mr. Ng and DG (now XingKe) have same legal counsels, it will
 8 be easier for Mr. Ng to obtain DG's consent to produce the laptop.

9 On June 26, 2018, SinCo's counsel sent a follow up letter to the meet and confer
 10 telephone call of June 25, 2018. The letter addressed the issues discussed on the call, including
 11 the following discovery requests:

- 12 1. SinCo requested Mr. Ng to re-produce legible documents in native form,
- 13 2. SinCo requested Mr. Ng to produce all the Cupertino company documents improperly
- 14 listed on privilege log subject to the protective order (Request No.14), and
- 15 3. SinCo requested Mr. Ng to produce his initial Visa application that will identify who he
- 16 asserted as his employer while travelling to the United States (Request No.15).

17 On August 1, 2018, SinCo's counsel sent an email to Mr. Ng's counsel, listing the
 18 information Mr. Ng failed to provide. On the same day, Mr. Ng's counsel replied by stating that
 19 Mr. Ng had complied with all the requests, to date, SinCo has not received any supplemental
 20 production from Mr. Ng as to the categories described above.

21 **II. CY NG'S POSITION**

22 The parties went through extensive meet and confer on this back in June 2018. It is not
 23 clear why these issues have arisen again 5 months later in November 2018. Apart from the lack of
 24 timeliness, defendant Cy Ng's responses to each of the issues follows.

25 **1. Document Requests Nos. 12-14 & 19**

26 **Request No. 12-** The request asks for emails that reference "SINCO." The Microsoft computer at
 27 issue came into use in late October-early November 2017. As indicated in the response, the Sinco
 28

1 name was no longer in use as of February 12, 2018. Therefore, the relevant time period is from
2 about November 1, 2018 to sometime before early February. About a 2-month period. There
3 could also be some outliers in terms of time.

4 Mr. Ng was involved with many Apple Computer emails. These were placed on a
5 privilege log. So, what remains of production 12 is primarily non-Apple emails from the above
6 time period. Mr. Ng could not find any.

7 Plaintiff Sinco alleged that it has emails from Mark Liew to Cy Ng in this time period that
8 Cy Ng did not produce.

9 **Current Status:** Counsel for Cy Ng has requested, with very specific instructions, that
10 Mr. Ng go back and check carefully for anything that he might have over-looked.

11 **Request No. 13-** this request seeks documents from an inoperative Dell Vostro work computer
12 used in the past by Mr. Ng. This is addressed separately below.

13 **Request No. 14-** This request seeks a year of Apple Computer emails. These emails concern
14 production of Apple's products at the China factory. Due to Apple's strict policies protecting its
15 intellectual property, these emails were placed on a privilege log. Plaintiff alleges that Apple does
16 not have a privilege (as a third party or otherwise) to withhold documents.

17 **Current Status:** Counsel for Cy Ng has contacted Apple's legal department to request
18 permission to release the Apple emails. If permission is given, the issue will be moot.

19 **Request No. 19:** This was a dense request, looking for written agreements that contain the
20 "SINCO MARKS." This was answered despite the confusing reference to the marks, since
21 plaintiff in various documents alleges many. Also, what constitutes a "written agreement" could
22 be very broad. Further, it is unlimited in time, and could conceivably roll back to the time of
23 Sinco Silicon Rubber Co. back in the 2001 time-frame. That is 17 years.

24 The written agreements in this case, if any, have been exchanged. Cy Ng answered
25 broadly and produced NG000482-NG0002063. The request has been complied with.

26 The main complaint here by plaintiff seems to be related to the Apple documents and the
27 Dell Vostro computer, so there is overlap on the documents requested.
28

1 **Current Status:** no further action is anticipated here, other than as set forth in for the
2 other requests.

3 **2. Discrepancy / Microsoft Laptop**

4 Mr. Ng provided an estimate during his deposition of documents that he had in his
5 possession. These were hard copies of documents that Mr. Ng had in a pile. As he informed Mr.
6 Andara, they were not relevant to the discovery requests. Since Mr. Ng is not a lawyer, he said
7 "not relevant" instead of "not responsive."

8 In an effort to remove any doubt, Mr. Ng produced all those documents at Mr. Andara's
9 insistence, and the documents are indeed of little use (what plaintiff calls "non-responsive"
10 above), but they were produced anyway.

11 There were fewer documents than Mr. Ng estimated at his deposition, but that is why it is
12 called an estimate. For some reasons, plaintiff seems to insist that since there are fewer
13 documents than estimated, there must be more being withheld. There is no further place to take
14 this issue.

15 **Current Status:** no further action is anticipated here.

16 **3. Dell Vostro Computer**

17 Mr. Ng, like other employees, had a Dell Vostro computer for work. The computer
18 belonged to his employer, Sinco China. Mr. Ng's Dell Vostro had an electrical failure (before he
19 knew about the lawsuit) and he gave it to the technology repair department of his employer, Sinco
20 Electronics.

21 Mr. Ng's laptop was not alone. Several Dell Vostros had the same problem, an electrical
22 short. These laptops do not belong to employees like Mr. Ng; they belong to the employer. A list
23 of the defective Dell Vostros was provided to plaintiff Sinco.

24 The laptop was returned to Mr. Ng, repaired. But the problem lingered. Around the time
25 (October 2017) that Mr. Ng was served and answered the lawsuit, he turned the laptop in for
26 further repair. Mr. Ng had the presence of mind to include a note that for the tech repairman that
27 the information on the computer was important. A copy of the letter was produced to plaintiff
28 Sinco.

1 The computer had been repaired before, and Mr. Ng logically anticipated a second repair.
2 Instead of a second repair, Mr. Ng was issued a new laptop. The old (Dell) laptop is in the
3 possession of the repair department, which will not return it to Mr. Ng.

4 **Current Status:** With ML Tjoa, a principal of shareholder KOTL, recently coming into
5 the case, it should be no problem obtaining access to the Dell laptop. The Dell laptop was in use
6 by Mr. Ng for many years, and will potentially contain substantial trade secret, attorney-client
7 communications, private marital communications, and similar items. Due to the laptop's defunct
8 status, it will require a forensic company to obtain data. These options will now be explored.

9 It bears mentioning that neither of the entity defendants- Sinco Electronics (Dongguan)
10 Co. LTD., and Xingke Electronics (Dongguan) Co, LTD., are yet represented in this federal case,
11 so plaintiff Sinco is mistaken in this regard.

12 **4. Other Matters**

13 Mr. Ng has produced all visa information he was able to obtain. As written in the June 28,
14 2018 meet and confer letter from Cy Ng, there is no way to just "log on" and get the information
15 requested. Mr. Ng went so far as to go to the China GZ U.S. Embassy but was turned down by an
16 embassy officer, since the information sought is considered confidential.

17 On the final issue of "legible documents," a handful of the documents produced were
18 illegible. These were the best copies available, and counsel for Sinco was so informed. Cy Ng
19 properly produced even illegible documents so their existence would be known. This is now an
20 issue with plaintiff Sinco.

21 **Current Status:** no further action is anticipated here.

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25 //

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Dated: November 9, 2018

ROPERS, MAJESKI, KOHN & BENTLEY


By:


LAEL D. ANDARA
MICHELLE G. TREVINO
Attorneys for Plaintiff
SINCO TECHNOLOGIES PTE LTD

Dated: November 9, 2018

DEHENG LAW OFFICE

By:


CHRISTOPHER J. HOGAN
Attorneys for Defendants
NG CHER YONG and MUI LANG TJOA

MEET AND CONFER PROCESS

I CERTIFY THAT, pursuant to Judge Chen's Standing Order that parties had agreed on **November 1, 2018** to meet in person on **November 6, 2018**. On **November 6, 2018**, Mr. Hogan communicated to Mr. Andara that he was ill and requested that the meet and confer be postponed. In order to facilitate the meet and confer process and for good cause Mr. Andara and Mr. Hogan agreed to discuss the issues set forth in the letter brief attached via video conferencing on **November 8, 2018**.

Date: November 9, 2018



Michelle G. Trevino